Supreme Court, U.S.
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No. 94-257

In The

Supreme Court of the United States

October Term, 1994

ROSEANN DALEY EVANS, Individually and as Administratrix of the Estate of Fred Daley, Deceased,

Petitioner,

v.

RESOLUTION TRUST CORPORATION, Receiver for University Savings Association, and in All other Capacities, and TED KOHLEFFEL,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITATIONS ii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION 6

I. Summary Of Reasons For Denying The Petition 6

II. The Court of Appeals Did Not Err By Affirming The District Court's Summary Judgment For The Defendants Because The District Court Followed the Summary Judgment Standard of Rule 56(c) 9

(1) There is No Genuine Issue Of Material Fact That Fred G. Daley Died Intestate .. 9

(2) Evans Is Judicially Estopped From Asserting A Belief That A Will Existed 14

(3) Evans Individually Has No Standing To Seek Damages Related To The Search For A Will 16

CONCLUSION AND REQUEST FOR DAMAGES ... 18

TABLE OF CITATIONS

Page

CASES

Aetna Life Insurance v. Wells, 557 S.W.2d 144 (Tex.Civ.App.–San Antonio 1977, writ ref'd, n.r.e.) 15

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 12, 14, 18

Chandler, et al. v. Welborn, 294 S.W.2d 801 (Tex. 1956) 17

Clear Lake City Water Authority v. Winograd, 695 S.W.2d 632 (Tex.Civ.App.–Houston [1st Dist.] 1985, writ ref'd, n.r.e.) 15

Dickson v. Klett, 211 S.W.2d 381 (Tex.Civ.App.–Galveston 1948, no writ) 17

Glover v. Landes, 530 S.W.2d 910 (Tex.Civ.App.–Houston [1st Dist.] 1975, writ ref'd, n.r.e.) 17

Miles v. Plumbing Services of Houston, Inc., 668 S.W.2d 509 (Tex.Civ.App.–Houston [14th Dist.] 1984, writ ref'd, n.r.e.) 16

Moore v. Neff, 629 S.W.2d 827 (Tex.Civ.App.–Houston [14th Dist.] 1982, writ ref'd, n.r.e.) 15

Van Dusen v. Connecticut General Life, 514 S.W.2d 951 (Tex.Civ.App.–Fort Worth 1974, no writ) 15

CODES, STATUTES

Federal Rules of Civil Procedure 56(c) 9, 12, 18

TEX. PROB. CODE ANN. §55 (1980) 11

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Ted Kohleffel ("Kohleffel"), respectfully requests that this Court deny the petition for writ of certiorari of Petitioner, Roseann Daley Evans, Individually and as Administratrix of the Estate of Fred Daley, Deceased ("Evans").

STATEMENT OF THE CASE

Evans' Statement of the Case presents the summary judgment evidence as she no doubt wishes it would

appear in the record below. However, her version is inaccurate and repeatedly misstates or revises the facts in an attempt to strengthen her position on this appeal. Accordingly, Respondent offers this version of the Statement of the Case found in the petition.

Fred G. Daley ("Daley") died on February 29, 1984, after a two week stay in the hospital. Respondent, Ted Kohleffel, visited Daley once or twice every day while he was in the hospital. Kohleffel was a close friend of Daley and resided on property purchased from Daley. Daley had given Ted Kohleffel the keys to his safe deposit box, had listed Kohleffel as his next of kin upon entering the hospital, and generally depended on Kohleffel to take care of his personal affairs while he was in the hospital.

While in the hospital, Daley became worried that he did not have a will and on February 27, 1984, two days before his death, Daley discussed the fact that he did not have a will with Ed Ward, a long time friend. Kohleffel had earlier contacted Mal Shumard, Daley's attorney in Boerne, Texas, regarding whether or not Daley had a will and the procedure for making a will. Shumard (who was also the attorney originally retained by Evans to handle the Daley Estate in the probate court), had worked for Daley's family through the years but had never prepared a will for Daley or ever discussed the preparation of a will with him. Nevertheless, at Kohleffel's request Shumard searched his office for a will but found none. Shumard then gave Kohleffel instructions to take notes of what Daley wanted and to bring a letter from Daley requesting Shumard to prepare a will. Kohleffel took some notes of Daley's wishes with the intent of relaying that information to Mal Shumard in order to prepare a will. However,

Daley's health worsened and he no longer felt well enough "to be bothered" with it.

On March 1, 1984, the day after Daley's death, Mal Shumard called Ted Kohleffel's home and gave instructions for Kohleffel to enter Daley's safe deposit box to check for a will or burial instructions. That same day, Kohleffel went to University Savings & Loan of Boerne, Texas ("USA"), and removed the following items from Mr. Daley's safe deposit box:

1. A Certificate of Honorable Discharge Form DD-214;
2. Fred G. Daley's birth certificate;
3. Arco Stock Certificate;
4. Five or six passport savings accounts booklets;
5. Warranty Deed to the property owned by Fred G. Daley in Boerne, Texas.

Kohleffel had entered the safety deposit box to procure information necessary to make funeral arrangements for decedent in accordance with Shumard's directions. Kohleffel never represented or attempted to mislead the USA employee that he intended to enter his own safety deposit box. Moreover, Kohleffel believed that he had authority to enter the box based on the instructions from Daley's attorney and the fact that Daley had given Kohleffel the key to the box prior to his death. Kohleffel returned all of the items he removed from the safe deposit box to Petitioner, Evans, except for the items he delivered to the funeral home. There is no evidence that Kohleffel found any will of Daley. There is no evidence that Kohleffel purloined any will of Daley.

Evans made application and was subsequently appointed Administratrix of the Estate of Fred G. Daley in Cause No. 4049, in the County Court of Kendall County, Texas on April 9, 1984. On that same day, Evans took an Oath of Administrator in which she swore that Daley died without leaving any lawful will. App. at 1. The probate court later declared that Daley died intestate. App. at 2.

Subsequently, Evans instituted a search for Daley's will because, she stated, she "had a feeling" that one existed. Evans proceeded with the search for the will even though she was aware of Ed Ward's conversation with Daley to the effect that Daley did not have a will. Furthermore, Ed Ward reported to the attorneys representing Evans that Fred G. Daley told him that he had no will. In spite of this information, Evans sought and the probate court granted to her as Administratrix of Daley's estate, the authority to enter into a contingent fee contract to search for a will, but declared that the Estate was prohibited from incurring any liability or expense in its pursuit.

While allegedly incurring expenses related to the search for a will, Evans continued to seek and accept benefits derived from Daley's intestacy. On November 6, 1985, the County Court of Kendall County, Texas, in Cause No. 4049, Estate of Fred G. Daley, Deceased, entered a Judgment Declaring Heirship finding that Fred G. Daley died intestate and determined that Roseann Daley Evans was entitled to 1/3 of Daley's estate. App. at 2.

Evans, Individually and as Administratrix of the Estate of Fred G. Daley, Deceased, filed suit against the Resolution Trust Corporation ("USA"), as Receiver for University Savings Association, for breach of contract, negligence and conspiracy to commit trespass with Kohleffel upon the personalty of Daley. Evans also sued Kohleffel for trespass, negligence and conspiracy to commit trespass with USA upon the personalty of Daley. In addition, Evans sought punitive damages from both Kohleffel and Daley based on their alleged intentional conduct.

Both USA and Kohleffel moved for summary judgment on all of Evans' claims. USA argued that since Daley left no will and no evidence exists for Evans to conclude that a will did exist, Evans' attempts to locate a will and the resulting expenses are unreasonable and thus, unrecoverable. In addition, to the grounds raised by USA, Kohleffel argued, among other things, that Evans is judicially estopped from claiming a will exists and thus, her investigation is unwarranted. Kohleffel also moved for summary judgment on all of Evans' claims.

The District Court granted both of Defendants' Motions in their entirety and issued an Order Granting Summary Judgment. The District Court found that there was simply no evidence that Kohleffel destroyed Daley's will and that in any event, the court was bound by the judgment and findings of the probate court that Daley died intestate. Since Evans was prohibited from using estate assets to search for a will, the District Court determined that the absence of damages on claims made on behalf of the estate was fatal to Evans' cause of action. With respect to the conspiracy claims against both the

USA and Kohleffel, the District Court found that Evans' summary judgment evidence failed to create any genuine issue of material fact on her allegations that the USA and Kohleffel acted in concert. Since Evans in her individual capacity failed to show that she had actual or constructive possession of any of the items in the safe deposit box, the District Court held that she had failed to show an essential element of trespass – actual or constructive possession. Finally, the District Court found that while for purposes of the summary judgment standard, Evans had established cause in fact for her negligence claim against Kohleffel, she failed to establish that the injuries she complains of were a foreseeable consequence of Kohleffel's conduct. Consequently, the District Court held that Evans failed to establish that the expenses she incurred were proximately caused by Kohleffel's actions. The Court of Appeals affirmed the summary judgment in favor of USA and Kohleffel after conducting a thorough review of the parties briefs and the record on appeal.

REASONS FOR DENYING THE PETITION

I. Summary Of Reasons For Denying The Petition

Just as Evans has manipulated the summary judgment evidence in her Statement of Case in an attempt to reinforce her position in this appeal, so too has she ignored and on occasion, misstated fundamental holdings of the courts below in her arguments for granting the petition.

All of Evans' claims are related in one way or another to the issue of the existence of Daley's last will and

testament. The Kendall County probate court entered a final judgment declaring that Daley died intestate and divided the property of the estate accordingly. The probate court further ordered that no estate funds were to be expended in the prosecution of the claims against Kohleffel and the USA. Since Daley died intestate and no estate funds were permitted to be expended in the prosecution of the claims, the Estate's claims fail for lack of damages.

There is absolutely no summary judgment evidence to indicate that Kohleffel failed to return any of the items he removed from Daley's safe deposit box. Evans relies in her argument on her "feeling" that a will existed and her conjecture that Kohleffel destroyed or secreted the will to establish a triable fact issue to take to a jury. In essence, Evans is asserting that Kohleffel's credibility is a genuine fact issue. To survive a motion for summary judgment, Evans must show more than a hope to conduct a successful cross examination.

It bears emphasis that however Evans attempts to dress up her arguments, she cannot avoid the probate court's determination that Daley died without a will. Evans was a party to the proceeding in which the probate court entered a final judgment declaring that Daley died intestate. The probate court judgment is binding on her. Furthermore, Evans swore that as far as she knew or believed, Daley died without a will. As a consequence of that oath in the probate court proceeding, Evans is judicially estopped from asserting a contrary assertion, *i.e.*, the reasonableness of her belief that Daley died with a will. In any event, actions to recover property belonging

to an estate, must be brought by the personal representative of the estate. Evans has no standing individually to seek to recover damages for a claim belonging to the Estate of Fred G. Daley, Deceased.

Implicit throughout Evans petition is the notion that in spite of the lack of evidence of a will or the fact that Evans accepted benefits of Daley's intestacy, Evans is entitled to submit an issue to the jury regarding the reasonableness of her search for a will. This is wrong-headed and the District Court correctly concluded that she is estopped to complain of Kohleffel's conduct. Evans has never seen a will of Fred G. Daley; she knows of no person who has ever seen a will of Fred G. Daley, read a will of Fred G. Daley, or had Fred G. Daley's will read to them; she knows of no attorney who contends that he or she drafted a will for Fred G. Daley. Evans has no other basis for her claim that Ted Kohleffel withheld a will or other document from her, other than her feeling that there was a possibility that there was a will. No will has ever been found or known to exist.

For these reasons, the District Court was correct in concluding that there was no genuine issue of material fact and that Kohleffel and the USA were entitled to judgment as a matter of law.

II. The Court of Appeals Did Not Err By Affirming The District Court's Summary Judgment For The Defendants Because The District Court Followed the Summary Judgment Standard of Rule 56(c).

(1) There is No Genuine Issue Of Material Fact That Fred G. Daley Died Intestate.

Evans strives mightily in her brief to create the impression that the District Court engaged in a process of weighing the credibility of the evidence in granting the summary judgment against the estate's claims. This clearly was not the case and Evans has in several instances misstated the record to make it to so appear. Nowhere is Evans' mischaracterization of the District Court's decision more evident than in her argument dealing with the issue of the existence of Daley's will. While Evans accurately quotes the District Court when it stated that "based on the summary judgment evidence the court would conclude on its own that [Daley] never executed a valid will" (Pet. at p. 8), she completely ignores the Court's finding which formed the true basis of its judgment. Here is the entire passage from the Court's opinion:

> As a matter of law, Plaintiff is precluded from relitigating the issue of Deceased's intestacy in this Court by the findings of fact contained in the probate court judgment declaring heirship. *Even if this were not the case,* based on the summary judgment evidence the Court would conclude on its own that Deceased never executed a valid will.

Pet. App. at 8 (emphasis added). Thus, the District Court clearly states that Evans is precluded from relitigating the issue of the existence of a will because the probate court's

judgment is conclusive on that issue. To characterize this ruling as being a result of weighing the credibility of the evidence is simply a misstatement of the District Court's holding.

This distinction is apparently lost on Evans as she continues to insist that the District Court's opinion is based on a fact finding exercise. After attempting to rebut point by point the Court's analysis of the facts, Evans summarizes the Court's findings on the existence of a will as follows:

> Finally, the Court concludes, that Daley died intestate, and based the remaining amount of its opinion on this conclusion.

Pet. at 11. Again, if the passage of the District Court's opinion to which Evans refers is examined, it is easy to see that she has misread and selectively paraphrased the lower court's ruling to support her position. The entire passage from the District Court's holding to which she refers follows:

> The Court concludes from all of the above that Deceased died intestate and *that this Court is, in any event, bound by the judgment and findings of fact of the probate court.*

Pet. App. at 12 (emphasis added). The District Court has made it clear that it relied on the probate court's findings and not its own analysis of the evidence in granting the summary judgment.

The Kendall County probate court entered a Judgment Declaring Heirship on November 6, 1984, in which it found that "the evidence presented and admitted fully

and satisfactorily proves . . . the Decedent died intestate . . . " App. at 2. As pointed out by the District Court, in Texas, the judgment entered in an heirship proceeding is a final judgment. TEX. PROB. CODE ANN. §55 (1980);[1] Pet. App. at 9. Since Evans was an interested party with notice of the proceedings in the probate court,

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[1] Section 55 of the Texas Probate code as it existed at the time of the initiation of the probate of the Daley Estate provides with respect to a judgment declaring heirship:

> (a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.
>
> (b) Although such judgment may later be modified, set aside, or nullified, it shall nevertheless be conclusive in any suit between any heir omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted heir. Similarly, any person who has delivered funds or property of the decedent to the persons declared to be heirs in the judgment, or has engaged in any other transaction with them, in good faith, after entry of such judgment, shall not be liable therefor to any person.

TEX. PROB. CODE ANN. §55 (1980).

she is bound by its judgment and its findings. Furthermore, Evans did not contest the heirship proceedings, and consequently, she is precluded from relitigating the issue of the existence of a will.

Evans ignores the District Court's holding regarding the existence of Daley's will and instead attempts to mount an attack on a slightly different facet of the same issue. Evans argues that she is entitled to have a jury determine what amount of damages would fairly compensate the Daley's estate for the costs of the investigation into the whereabouts of her uncle's will and the "suspicious" actions of USA and Kohleffel. Pet. at 14. However, she has failed to produce any evidence whatsoever that Kohleffel destroyed, took or secreted a will or any other document. Moreover, as pointed out in the District Court's opinion, Kohleffel had no motive to destroy a will even if one existed since he had already been informed by Shumard that the hand written document he produced was not a properly executed will. Pet. App. at 12.

Evans attempts to mislead this Court by quoting portions of the District Court's holding that do not form the basis for the decisions below. Likewise, Evans ignores the essential parts of the District Court's decision which unequivocally indicate that the Court based its decision on the clearly established standards of Rule 56(c) Federal Rules of Civil Procedure and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The findings of fact which Evans set out in her brief (Pet. at 12-13) are not the findings upon which the District Court based its decision. The first two "findings" were discussed by the Court in relation to Evans' claim that Kohleffel and USA conspired

against Evans. The District Court actually found that "[t]he summary judgment evidence contains no evidence creating any genuine issue on Plaintiff's allegations that the defendants acted in concert." Pet. App. at 13. Evans has yet to point to any evidence in the record of joint conduct between Kohleffel and USA. The remainder of the references relate to the District Court's holding that Evans' damages, if any, were not proximately caused by Kohleffel's conduct. Has Evans directed the Court's attention to any part of the record which even remotely demonstrates a genuine issue of material fact with respect to the foreseeability of damages? No.

The following statements of the District Court are illustrative that the District Court did not engage in an evidence weighing role in this case:

— As a matter of law, Plaintiff is precluded from relitigating the issue of Deceased's intestacy in this Court by the findings of fact contained in the probate court judgment declaring heirship. Pet. App. at 8.

— Even if it were free to make its own finding, the Court would conclude that there was no will. Pet. App. at 9.

— The Court concludes from all of the above that Deceased died intestate and that this Court is, in any event, bound by the judgment and findings of fact of the probate court. Pet. App. at 12.

— The summary judgment evidence contains no evidence creating any genuine issue on Plaintiff's allegations that the defendants acted in concert. Pet. App. at 13.

— It is uncontested that Plaintiff, in her individual capacity, had no actual or constructive possession of any of the items in the safe deposit box. Therefore, even if the Court were to assume that there was a will in the box, Plaintiff's trespass cause of action fails for lack of the requisite possession. Pet. App. at 16.

— The Court feels that questions of whether a legal duty has been breached by certain conduct are particularly inappropriate for summary judgment. The Court cannot effectively assess the credibility of the parties by inspecting summary judgment documents except in rare cases not present in this case. Summary judgment on this issue therefore would be improper. Pet. App. at 17.

Evans avoids discussing the District Court's finding that she is precluded from relitigating the issue of Daley's intestacy. Her failure to address this holding in her brief is an admission that she has no response. Any *serious* attempt to demonstrate a deviation from Rule 53(c) and the Court's decision in *Anderson* in order to invoke the Court's powers of supervision, must address this crucial holding of the courts below.

(2) Evans Is Judicially Estopped From Asserting A Belief That A Will Existed

Under the doctrine of "judicial estoppel," a party is estopped by the fact of having alleged or admitted in his pleadings in a former proceeding under oath the contrary to the assertion sought to be made. When a party has taken a sworn position in a judicial proceeding, that party cannot later take a contrary position in absence of proof

that the prior statement was made inadvertently, by mistake, or by fraud. *Clear Lake City Water Authority v. Winograd*, 695 S.W.2d 632 (Tex.Civ.App.–Houston [1st Dist.] 1985, writ ref'd, n.r.e.). Further the courts in Texas have held that it is not necessary that a sworn statement giving rise to judicial estoppel occur in sworn pleadings, but that the sworn statements can occur in the sworn pleadings, depositions, testimony or in an affidavit. *Van Dusen v. Connecticut General Life*, 514 S.W.2d 951 (Tex.Civ.App.–Fort Worth 1974, no writ). Nor is it necessary for the party seeking protection of the doctrine to be a party to the prior proceeding in which the statement was made. *Aetna Life Insurance v. Wells*, 557 S.W.2d 144 (Tex.Civ.App.–San Antonio 1977, writ ref'd, n.r.e.). Judicial estoppel only applies, however, if the party was successful in maintaining the prior position. *Moore v. Neff*, 629 S.W.2d 827, 829 (Tex.Civ.App.–Houston [14th Dist.] 1982, writ ref'd, n.r.e.).

On April 9, 1984, Evans accepted the position of Administratrix of the Estate of Fred G. Daley by taking the Oath of Administrator wherein she swore that the decedent died without leaving a will *as far as she knew or believed*. App. at 1. Later in the same proceeding, Evans sought by sworn pleadings and obtained the judgment of the Kendall County probate court that Daley died intestate. App. at 2. As a result of the Judgment Declaring Heirship, Evans received a one-third interest in all of the real and personal property of Daley (App. at 2) and thus derived great benefit and was successful in her assertion that Daley died without a will. Under the doctrine of judicial estoppel discussed above, as a result of her oath, sworn pleadings and her success in maintaining Daley's

intestacy in the prior proceedings, Evans is precluded from asserting the existence of the will or asserting a *belief* that a will existed.

Evans should not be permitted to swear that she did not *believe* there was a will in the probate court and on the basis of that oath receive property from the estate, then later rely in this proceeding on a contradictory assertion to the effect that she had a reasonable belief that there was a will. It is this inherent unfairness, distinguishable from asserting inconsistent positions within a single proceeding, that the doctrine of judicial estoppel prevents. Texas courts have adopted the doctrine of judicial estoppel to uphold the sanctity of the oath and eliminate prejudice to the administration of justice arising from inconsistent sworn statements. *Miles v. Plumbing Services of Houston, Inc.*, 668 S.W.2d 509, 512 (Tex.Civ.App.–Houston [14th Dist.] 1984, writ ref'd, n.r.e.).

(3) Evans Individually Has No Standing To Seek Damages Related To The Search For A Will

A personal representative of an estate under Texas law, has the authority to recover possession of all property of the estate and to engage attorneys to recover such property.[2] Generally, a suit on causes of action relating to

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[2] Section 233 of the Texas Probate code as it existed at the time of the initiation of the probate of the Daley Estate provides with respect to the collection of claims and recovery of property as follows:

> Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of

an estate of a deceased person must be prosecuted by the personal representative and not by the heirs, devisees or legatees, except where the personal representative has neglected or refused to prosecute such suit. *Dickson v. Klett*, 211 S.W. 2d 381 (Tex.Civ.App.–Galveston 1948, no writ). While there are other exceptions to that general rule, such as for instance, when the administrator's interest is antagonistic to that of the heirs desiring to sue, e.g., *Chandler et al. v. Welborn*, 294 S.W.2d 801, 806 (Tex. 1956)]; *Glover v. Landes*, 530 S.W.2d 910, 911 (Tex.Civ.App.–Houston [1st Dist.] 1975, writ ref'd, n.r.e.), none of the exceptions apply in this case because Evans, as personal representative of Daley's estate, sought and obtained permission from the probate court to file a claim against Kohleffel and the USA. There is no evidence that the Administratrix of Daley's estate failed to act or had an interest in conflict with one of the heirs of Daley's estate. Consequently, based on the foregoing decisions, Evans individually has no standing to sue and cannot recover in her individual capacity expenses from Kohleffel related to the search for the will.

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the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property . . . such representatives may enter into contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for service of attorneys and incidental expenses, subject only to approval of the court in which the estate is being administered.

TEX. PROB. CODE ANN. §233 (1980).

CONCLUSION AND REQUEST FOR DAMAGES

Evans has sought and accepted the benefits that accrued to her by virtue of Daley's intestacy. Evans chose to establish Daley's intestacy by representing to the probate court that she did not believe there was a will. She is judicially estopped from asserting the existence of a will or the reasonableness of her search for a will by virtue of accepting benefits from the Daley estate. The Court of Appeals properly affirmed the District Court's judgment as it was based on the principals set forth in Rule 56(c) and *Anderson v. Liberty Lobby, Inc.* Evans' argument is based in large part on an inaccurate version of the summary judgment record and the opinions of the courts below. Evans' petition for writ of certiorari should be denied. Her petition is frivolous as it is based on substantial misstatements of the record below. Costs, damages and other appropriate relief should be awarded to Kohleffel pursuant to S. Ct. R. 42.

Respectfully submitted,

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APPENDIX

NO. 4049

IN THE COUNTY COURT OF
KENDALL COUNTY, TEXAS

IN PROBATE

IN RE: ESTATE OF FRED G. DALEY, DECEASED.

OATH OF ADMINISTRATOR

I do solemnly swear that FRED G. DALEY, Deceased, died without leaving any lawful Will, so far as I know or believe, and that I will well and truly perform all the duties of Administrator of the Estate of said FRED G. DALEY, Deceased.

/s/ Roseann Daley Evans
Roseann Daley Evans

SWORN TO AND SUBSCRIBED BEFORE ME, this 9th day of April, 1984.

/s/ Darlene Herrin
Darlene Herrin, County Clerk,
Kendall County, Texas.
By: Sharon Masters

No. 4049

IN RE THE ESTATE OF	§	IN THE COUNTY COURT
FRED G. DALEY,	§	OF KENDALL COUNTY,
	§	TEXAS
DECEASED	§	
	§	SITTING IN MATTERS
	§	PROBATE

JUDGMENT DECLARING HEIRSHIP

On this day came on to be heard the sworn Application to Determine Heirship of the Estate of FRED G. DALEY, Deceased ("Decedent"), wherein ROSEANN DALEY EVANS, CORNELIUS JAMES LROY and WILLIAM WILLIS LROY are the Applicants, and Decedent's living heirs whose names and/or whereabouts are unknown and heirs suffering legal disability are Defendants, and it appears to the Court, and the Court so finds that all parties are interested in the Estate of Decedent have been duly and legally served with citation as required by law; that the Court appointed an attorney ad litem to appear and to represent Defendants and such attorney ad litem did so appear for Defendants; that this Court has jurisdiction of the subject matter and all persons and parties; that the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the Court; that the Decedent died intestate and that the heirship of Decedent has been fully and satisfactorily proved as well as the identity of the nature of Decedent's property and the interest and shares of each of the heirs therein.

The Court finds and it is ORDERED and DECREED by the Court that the names and places of residence of the

heirs of Decedent and their respective shares and interests in the real and personal property of Decedent are as follows:

NAME	RESIDENCE	INTEREST
ROSEANN DALEY EVANS	Bedford, Texas	1/3
CORNELIUS JAMES LROY	1322 South Mojave Road Space 420 Las Vegas, Nevada 89104	1/3
WILLIAM WILLIS LROY	P. O. Box 161 Safford, Arizona 85546	1/3

It is ORDERED and DECREED that the attorney ad litem appointed to represent the interests of the Defendants is allowed a fee of $200.00 to be paid out of the assets of Decedent.

SIGNED on this, the 6th day of November, 1985.

/s/Ken Muller
JUDGE PRESIDING

APPROVED:

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